



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Town of Groton
c/o Board of Selectmen
63-3 North Groton Road
Groton, NH 03241

Re: Financial Assurance for
Municipal Solid Waste Landfill at
North Groton Road,
Groton, NH 03241

ADMINISTRATIVE ORDER
No. WMD 03-29

November 24, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to the Town of Groton pursuant to RSA 149-M:15. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. The Town of Groton ("Town") is a duly constituted municipality of the State of New Hampshire having a mailing address of 63-3 North Groton Road, Groton, NH 03241.

C. STATEMENTS OF FACTS AND LAW

1. RSA 149-M authorizes DES to regulate the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 100-300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. The Town is the owner of a municipal solid waste landfill ("MSWLF") unit located at North Groton Road, Groton, NH ("Facility").
3. Pursuant to 40 CFR Part 258.74, MSWLF units that received waste after October 9, 1991, and did not complete capping the facility by October 9, 1994, were required to provide financial assurance on or before April 9, 1997.
4. The United States Environmental Protection Agency has granted DES authority to implement and enforce 40 CFR Part 258.74.

5. RSA 149-M:9, X requires a MSWLF to provide evidence of financial responsibility under the terms and conditions required in rules adopted by DES.
6. DES has adopted rules under Env-Wm 3100 to implement RSA 149-M:9, X
7. Env-Wm 3103.01(a) requires a permittee to “establish, implement, and maintain an approved financial assurance plan to guarantee the cost of facility closure.”
8. Env-Wm 3103.01(b) sets forth the requirements for a financial assurance plan, including a letter signed by the local government’s chief financial officer (CFO).
9. The Town continued to receive waste at the Facility after October 9, 1991, and did not complete capping the Facility by October 9, 1994.
10. The Town has elected to satisfy its financial assurance obligation through the local government financial test, a/k/a “LOGO”. As such, DES informed the Town of the steps necessary to comply with its 2003 obligation. Specifically, DES has notified the Town of the required documentation to attain 2003 compliance as follows:
 - (a) A letter dated May 14, 2003, was sent to the Town stating that updated financial assurance information was due on or before June 30, 2003.
 - (b) On July 15, 2003, DES staff called the Town and left a message requesting a return call on the voice mail in the Town Office. No return call was received.
 - (c) A letter dated August 5, 2003, was sent by DES to the Town stating that none of the previously requested financial assurance information had been received and requesting that the information be submitted within ten (10) working days from receipt of the letter. The Town received the letter on August 14, 2003.
 - (d) On September 3, 2003, DES staff called the Town and left a second message requesting a return call on the voice mail in the Town Office. No return call was received.
 - (e) On September 8, 2003, DES received from the Town’s independent auditing firm, an audit opinion of the Town’s 2003 CFO letter to DES, as required by the Solid Waste Rules. However, no CFO letter had been submitted by the Town or by the Town’s auditors.
 - (f) DES issued to the Town the Letter of Deficiency No. WMD 03-25 (LOD) dated September 12, 2003. This LOD requested that the Town (1) contact the Solid Waste Management Bureau within ten (10) days to provide an update on the status of the Town meeting the LOGO requirements and (2) provide DES with the required information within thirty (30) days from receipt of the LOD.
 - (g) The Town received the LOD on September 23, 2003. DES has received no response to the LOD.

11. Despite an ongoing effort by DES staff, involving detailed letters and phone calls, to work with the Town to resolve LOGO compliance, the Town has failed to submit complete financial assurance information for 2003.

D. DETERMINATION OF VIOLATIONS

1. The Town has violated RSA 149-M:9, X, Env-Wm 3103 and 40 CFR Part 258.74 by failing to submit the required financial assurance information to DES.

E. ORDER

Based on the above findings, DES hereby orders the Town of Groton as follows:

1. **Within fourteen calendar days of the date of this Order**, submit the following:
 - (a) a CFO letter for 2003 financial assurance;
 - (b) an updated cost estimate to cover the minimum 30-year post-closure care of the Groton Municipal Solid Waste Unlined Landfill;
 - (c) an Annual Financial Report (AFR) for Year Ending December 31, 2002. This report must contain a reference to the post-closure care requirements, the reported liability at the balance sheet date, and the estimated total post-closure care cost remaining to be recognized; and
 - (d) an Audit Opinion supporting the information in the CFO letter.
2. Please send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:


Mr. Richard S. Reed, Administrator
Solid Waste Management Bureau
NHDES, Waste Management Division
PO Box 95
Concord, NH 03302-0095
Fax No.: (603) 271-2456
E-mail: rreed@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 Procedural Rules within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve the Town of Groton of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself.


Frederick J. McGarry, P.E., DEE
Chief Engineer & Acting Director
Waste Management Division


Michael B. Nolin
Commissioner
Department of Environmental Services

Certified Mail/RRR: # 7099 3400 0018 1299 2200

cc: Gretchen Rule, Administrator, Legal Unit
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Assistant Attorney General, NHDOJ
SWMB